



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,380	12/06/2005	Albin A. W. Baecker	ADMS 3668	8375
321	7590	10/25/2007	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			O HERN, BRENT T	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			10/25/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[uspatents@senniger.com](mailto:uspatents@senniger.com)

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/537,380	BAECKER ET AL.
	Examiner Brent T. O'Hern	Art Unit 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 October 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 7,9-11,13-17 and 21-23 is/are pending in the application.
  - 4a) Of the above claim(s) 22 and 23 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 7,9-11,13-17 and 21 is/are rejected.
- 7) Claim(s) 21 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 September 2007 has been entered.

### *Claims*

2. Claims 7, 9-11, 13-17 and 21-23 are pending with method claims 22-23 newly added in the Paper filed 26 September 2007. The supplemental amendment filed 5 October 2007 is noted. Claims 22-23 are withdrawn method claims.

### *Election/Restrictions*

3. Newly submitted method claims 22-23 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The method claims, claims 22-23, and the product claims do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Claim 21 is obvious over Baecker et al. (US 5,725,921) in view of Steele et al. (US 5,302,428). Accordingly, the special technical feature linking the two inventions, the liner, does not provide a contribution over the prior art, and no single inventive concept exists.

Since applicant has received an action on the merits for the originally presented invention, this invention has been **constructively elected by original presentation** for

prosecution on the merits. Accordingly, claims 22-23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### **WITHDRAWN REJECTIONS**

4. The 35 U.S.C. 112, second paragraph, rejections of claims 21, 7, 9-11, and 13-17 of record in the Office Action mailed 29 March 2007, page 3, paragraph 6 have been withdrawn (except for the limitation “**the location of**” in claim 21, line 12) due to Applicant’s amendments in the Paper filed 5 October 2007. Application did not provide clarification and/or correction as required. The “location” was not previously presented.
5. The 35 U.S.C. 103(a) rejections of claims 21, 7, 9-11, 13-14 and 16-17 as being unpatentable over Baecker et al. (US 5,725,921) in view of Steele et al. (US 5,302,428) of record in the Office Action mailed 29 March 2007, page 3, paragraph 7 have been withdrawn due to Applicant’s amendments in the Paper filed 5 October 2007..
6. The 35 U.S.C. 103(a) rejections of claim 15 as being unpatentable over Baecker et al. (US 5,725,921) in view of Steele et al. (US 5,302,428) and Holt et al. (US 5,070,597) of record in the Office Action mailed 29 March 2007, page 6, paragraph 8 have been withdrawn due to Applicant’s amendments in the Paper filed 5 October 2007.

### **REPEATED REJECTIONS**

7. The 35 U.S.C. 112, second paragraph, rejections of claims 21, 7, 9-11, and 13-17 are repeated for the reasons of record in the Office Action mailed 21 August 2006, page 3, paragraph 6.

**NEW OBJECTIONS*****Claim Objections***

8. Claim 21 is objected to because of the following informalities: In claim 21 line 2 of the Paper filed 26 September 2007 the term "elongated" was added without any marking indicating such. Furthermore, the term "elongate" was deleted without any markings indicating such. Appropriate correction is required. Applicant is advised to carefully review all claims to be sure no other subject matter has been deleted or added without proper markings.

**NEW REJECTIONS*****Claim Rejections - 35 USC § 103***

9. Claims 21, 7, 9-11, 13-14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baecker et al. (US 5,725,921) in view of Steele et al. (US 5,302,428).

Regarding claim 21, Baecker ('921) teaches a field liner (See col. 4, l. 44 and FIG-2, #26.) for protecting a timber pole against subsoil decay (See col. 4, l. 44 and col. 2, ll. 54-56.), which includes a sheet element in the form of an elongated cylindrical sleeve of which one end is at least partially sealed (See FIG-2 and col. 5, ll. 35-40 wherein one end is at least partially sealed by heat shrinking.), the sheet element being in the form of a laminate structure (See col. 3, l. 44.) including a first layer of material (col. 2, ll. 46-53), and a second layer of material (col. 2, ll. 57-59), with the first layer of material being a flexible (col. 2, ll. 46-53), liquid impermeable, non-biodegradable synthetic plastics film material (col. 2, ll. 57-59) that contains a dry film biocide therein (col. 2, l. 61) and defining an inner surface of the sleeve and the second layer of material being a flexible (col. 2, ll. 46-53), liquid impermeable (col. 2, l. 58), non-biodegradable (col. 2, ll. 58-59) synthetic plastics film

material (col. 2, ll. 57-59) that is tear resistant (col. 5, ll. 25-26), and defining an outer surface of the sleeve (col. 2, ll. 57-59), however, fails to expressly disclose in which the second layer of material is provided with a strip of an adhesive substance externally thereon.

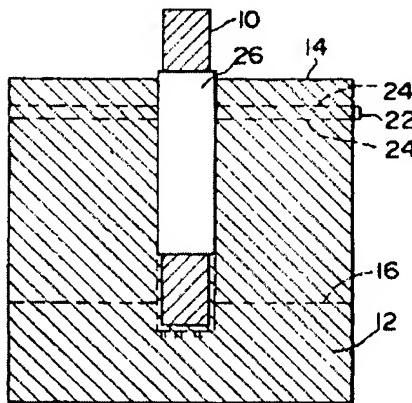


FIG. 2

However, Steele ('428) teaches in which the material is provided with a strip of an adhesive substance externally thereon (See FIGs 3-4, and col. 3, ll. 25-35 wherein adhesive #26 is external. Furthermore, "externally thereon" is interpreted as being external in any direction.) for the purpose of holding down the liner and providing adhesion between the layers (See col. 3, ll. 34-35 and col. 4, ll. 31-36.).



FIG. 3

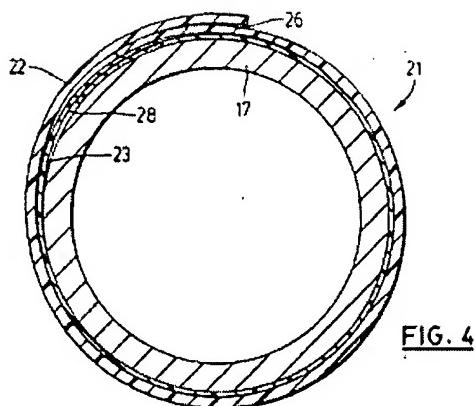


FIG. 4

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to modify Baecker ('921) with an adhesive substance as taught by Steele ('428) in order to provide a liner that is held down and adhered to the other layers.

The phrase "**which can adhere to an opposing region of the second layer of material when the sleeve is located on a timber pole and tightly wrapped around the timber pole**" in claim 21, lines 10-12 is **optional** and directed towards an **intended use**, thus not further limiting in so far as the structure is concerned.

The phrase "**for securing the location of the sleeve on the pole**" in claim 21, line 12 is deemed to be a statement with regard to the **intended use** and is not further limiting in so far as the structure is concerned (see MPEP 2111.02).

Regarding claim 7, Baecker ('921) teaches a field liner in which the first layer of the sheet element is formed of polypropylene film (col. 3, l. 15).

Regarding claims 9-10 and 13-14, Baecker ('921) teaches a field liner in which the first/second layer of the sheet element contains an insecticide compound (pyrethroid insecticide, Deltamethrin) (col. 3, l. 19-23).

Art Unit: 1794

Regarding claim 11, Baecker ('921) teaches a field liner in which the second layer of the sheet element is formed of one of low density polyethylene and high density polyethylene (*col. 2, l. 63*).

Regarding claim 16, Baecker ('921) teaches a field liner in which the adhesive substance comprises an adhesive sealant.

Regarding claim 17, Baecker ('921) teaches the liner discussed above, however, fails to expressly disclose wherein the adhesive substance is covered by a peel-off strip.

However, Steele ('428) teaches wherein the adhesive substance is covered by a peel-off strip (*FIGs-3-4, #26, col. 3, ll. 25-35 and col. 4, ll. 47-50*) for the purpose of applying additional materials to the underlying layers (*col. 4, ll. 47-50*).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to modify Baecker ('921) with an adhesive substance covered by a peel-off strip as taught by Steele ('428) in order to provide a liner that is capable of applying additional materials to the underlying layers.

The phrase "that can form a part of the field liner and that can be peeled-off prior to or during application of the field liner onto a pole" in claim 17, lines 3-5 is optional language, thus not limiting.

**10.** Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baecker et al. (US 5,725,921) in view of Steele et al. (US 5,302,428) and Holt et al. (US 5,070,597).

Baecker ('921) teaches a field liner which includes a first layer and a second layer of the sheet element (*col. 3, l. 44*), however fails to expressly disclose a third layer of a flexible aluminum film that is vapour impermeable.

However, Holt ('597) teaches a flexible aluminum film (*See col. 7, ll. 53 and 56*,

*flexible aluminum film.) that is vapour impermeable (See col. 7, l. 62 wherein the aluminum film provides a vapour barrier. Furthermore, films of aluminum are well known to possess vapour impermeable properties.) for the purpose of providing a material that is flexible and a barrier to moisture (See col. 7, ll. 56 and 62.).*

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to modify Baecker ('921) with a flexible moisture water barrier aluminum as taught by Holt ('597) in order to provide a laminate that is flexible and a barrier to moisture.

#### **ANSWERS TO APPLICANT'S ARGUMENTS**

11. In response to Applicant's argument (*p. 8, para. 1 of Applicant's Paper filed 26 September 2007*) that Baecker ('921) does not disclose wherein at least on end is at least partially sealed, it is noted that Baecker ('921) clearly teaches a sheet element in the form of an elongated cylindrical sleeve of which one end is at least partially sealed (See FIG-2 and col. 5, ll. 35-40 wherein one end is at least partially sealed by heat shrinking.).

12. In response to Applicant's argument (*p. 8, para. 1 to p. 10, para. 1 of Applicant's Paper filed 26 September 2007*) that the adhesive of Steele ('428) is not external, it is noted as discussed above that Steele ('428) teaches in which the material is provided with a strip of an adhesive substance externally thereon (See FIGs 3-4, and col. 3, ll. 25-35 wherein adhesive #26 is external.). Furthermore, "externally thereon" is interpreted as being external in any direction.

13. In response to Applicant's argument (*p. 10, para. 2 to p. 11, para. 1 of Applicant's Paper filed 26 September 2007*) that the application of an aluminum film as a vapor barrier is not obvious in view of Holt ('597), it is noted as discussed above that Holt ('597) teaches

Art Unit: 1794

a flexible aluminum film (See col. 7, II. 53 and 56, *flexible aluminum film*.) that is vapour impermeable (See col. 7, I. 62 wherein the aluminum film provides a vapour barrier.) for the purpose of providing a material that is flexible and a barrier to moisture (See col. 7, II. 56 and 62.). Furthermore, films of aluminum are well known to possess vapour impermeable properties.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571) 272-0496. The examiner can normally be reached on Monday -Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-0996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brent T O'Hern *B JO*  
Examiner  
Art Unit 1794  
October 10, 2007

*Nasser Ahmad*  
NASSER AHMAD  
PRIMARY EXAMINER 10/22/07